IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2702 OF 2005

Yunus Ahmed Tamboli ..Petitioner.

Versus

Panchas Jama Masjid & Ors. ..Respondents.

Mr. P.S.Dani for the Petitioner.

Mr. S.R. Page for the Respondents.

CORAM : S. A. BOBDE, J.

DATED : 05TH JULY, 2005.

P.C.:

1. Rule. Rule made returnable forthwith. Mr. Page waives notice for Respondents. Heard by consent.

2. The petitioner/ plaintiff has approached this court against the order passed below Exh.106 by which the plaintiff's permission to sue the Respondents in their representative capacity under Order 1 Rule 8 of the C.P.C. has been rejected.

3. The plaintiff filed suit against the Jama Masjid, for a declaration and injunction, which belongs to Muslim community. The defence submitted in the written statement is that the said Jama Masjid is not registered under any Act but it is the association of the persons belonging to Muslim Community and therefore, cannot be sued. As a result, the plaintiff moved an application under Order 1 Rule 8(1)(a)(b), which reads as follows:-

> 8. One person may sue or defend on behalf of all in same interest.--
>
> (1) Where there are numerous persons having the same interest in one suit,--
>
> (a) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of, or for the benefit of, all persons so interested;
>
> (b) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of, or for the

benefit of, all persons so interested.

4. In my view, undoubtedly, numerous persons on the defendants' side have the same interest. Therefore, clause (b) is cleary attracted.

5. The learned trial court has held that allowing such an application amounts to amending the plaint, which cannot be done at this stage since the plaintiffs have not demonstrated due diligence. In making these observations, apparently, the trial court has lost sight of the fact that it became necessary for the plaintiff to move this application in view of the defence taken in the additional written statement.

6. In the circumstances, the impugned order dated 4.4.2005 is set aside. Rule is made absolute in terms of prayer clauses (a) and (b).

05.07.2005 (S.A.BOBDE,J.)

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